IBRAHIM HELMI MOHD. LIKI

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, ALOR SETAR
MUSTAPHA HUSSAIN J
[CRIMINAL APPEAL NO. 33/1982]
29 JANUARY 1984

CRIMINAL PROCEDURE: *Corruptly obtaining a cash sum as an inducement for showing favour in relation to the accused's principal's affairs - Knowingly misleading the principal by giving false statements - Ejusdem generis rule.*

The appellant was charged in the Sessions Court with two offences, namely:

(i) That he being an agent of the Malaysian Government did corruptly obtain from one Mdm. Kim, a cash sum as an inducement for showing favour in relation to his principal's affairs by improperly confining the compliance with the fire department requirements of the building owned by the said Mdm. Kim and also for recommending the Majlis Perbandaran, without clearance from headquarters, to issue the certificate of occupancy by certifying that all equipment recommended had been tested and found to be satisfactory.

(ii) That he knowingly gave to the Majlis Perbandaran a document containing false particulars intending to mislead the principal.

In the Court of first instance, the appellant was acquitted on the 1st charge and convicted on the 2nd charge and sentenced to 3 months' imprisonment and a fine of RM3,000. The appellant appealed against conviction and sentence on the grounds which can be divided into (a) question of law (b) question of fact.

The Judge decided that on the question of fact there were no grounds on which the Appellate Court could interfere with the findings. Accordingly, the Judge would consider only the first ground of appeal.

On the issues (a) of whether in law, the letter of clearance issued by the appellant was a document within the meaning s. 4(c) of "receipt, account or other document" and (b) that there must be evidence that the appellant had corruptly obtained or accepted any gratification in order to sustain the charge; that since the appellant was earlier acquitted to the 1st charge of corruptly obtaining RM400, he could not now be convicted on the second charge.

Held:

[1] The letter of clearance issued by the appellant was a document relating to money matters in that it gave a third party a financial advantage. As such, applying the *ejusdem generis* rule that the general term "other document" refers to something in the same genus as the preceding specific words of "receipt, account" i.e. money-related, the letter did come within the ambit of s. 4(c).

[2] Under s. 4(c) offence of knowingly using a document with intent to deceive his principal, no element of corruption in the sense of obtaining illegal gratification or financial benefit to the appellant is necessary. Merely doing the act "knowingly" is sufficient to establish guilt which is a kindred offence of abusing one's power akin to corruption.

[Appeal dismissed. Sentence varied.]

Cases referred to:
Nadimuthu v. PP [1974] 1 MLJ 20
Sage's case [1974] 1 MLJ 20

Legislation referred to:
Prevention of Corruption Act 1961, s. 4(a), (b), (c)

JUDGMENT

Mustapha Hussain J:

The appellant was charged in the Alor Setar Sessions Court on 8 March 1982 with 2 charges viz:

1st Charge

That you between the 18th day of November 1978 and the 14th day of January 1979 at house No. 1164 Bee Bee Park, Alor Setar, in the district of Kota Setar, in the State of Kedah, being an agent of the Government of Malaysia, namely,

a Superintendent in the Jabatan Bomba Malaysia and officiating as the Pengarah Perkhidmatan Bomba Negeri Kedah/Perlis,

did corruptly obtain from one Madam KIM LYE HOOI through one LIM AH LEP @ LIM KIM SOON, for yourself, a gratification, to wit,

a cash sum of RM400 (Ringgit four hundred) as an inducement for showing favour in relation to your principal's affairs, to wit,

to reduce the 'Syor Syor Bomba' that had been recommended by the Preventive Branch, Jabatan Bomba Malaysia Kuala Lumpur to be installed to the building on Lot No. 78 Mergong Alor Setar belonging to the said Madam KIM LYE HOOI, and to recommend to the Majlis Perbandaran the issue of certificate of occupancy to the abovesaid building by certifying that all the Bomba equipments recommended had been tested and found to be satisfactory

and that you have thereby committed an offence punishable under s. 4(a) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act No. 57).

2nd Charge

That you on 25th day of February 1979 at the office of the Majlis Perbandaran Kota Setar, Alor Setar, in the district of Kota Setar, in the State of Kedah, did knowingly give to an agent, viz,,

the Yang DiPertua, Majlis Perbandaran Kota Setar, Alor Setar,

a document, to wit,

Perakuan Kepada Sokongan Menduduki Bangunan No. JBM K/P (PK) 44020 dated 25th February 1979

in respect of which the Principal namely, the Majlis Perbandaran Kota Setar, Alor Setar is interested, and which document contains statements which are false in material particulars, to wit,

Semua alat-alat kelengkapan Bomba yang disyorkan telah diuji serta didapati memuaskan

which to your knowledge was intended to mislead the principal, and that you have thereby committed an offence punishable under s. 4(c) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act No. 57).

At the end of the trial the appellant was acquitted on the 1st charge and convicted on the 2nd charge. He was sentenced to 3 months' imprisonment and a fine of RM3,000 in default 3-months imprisonment.

The appellant now appeals against his conviction and sentence. His grounds of appeal are divided into 2 groups:

1. On the question of law, which can be sub-divided into two:

   (a) is that the document Exhibit P9 (appellant's letter of clearance as Director of State Fire Service Kedah/Perlis stating he has inspected the premises and found the fire equipment was satisfactory and supporting the application for Occupation Certificate) is not one of the category or nature of documents falling within s. 4(c); and

   (b) that since the appellant was acquitted on the first charge there was no illegal gratification or corrupt purpose to sustain the second charge for which he has been convicted.

2. On a question law and fact, which is in the main, pure question of facts.

The facts as found by the learned President are as follows:

Sometime in 1977 the Fire Service Department in Kuala Lumpur vetted two sets of plans Exh. P4 and Exh. P6 and issued certain fire prevention conditions Exhibit P5A and Exhibit P7A to the proposed building on Lot 78, Jalan Seberang Putra, Alor Setar for Speedwell Company (for short to be called here as "Speedwell"), which was proposed to be a motor workshop. Among the conditions imposed was that Speedwell was to instal

i) 2 units of hose reel system;

ii) fire alarm system;

iii) 5 fire extinguishers;

iv) oil interceptor,

The appellant at that time was the Director of the State Fire Service Kedah/Perlis and all correspondence containing the conditions imposed on Speedwell between the Fire Service Headquarters in Kuala Lumpur and the Majlis Perbandaran Kota Setar (the local authority that issues the Occupation Certificate for buildings in the Kota Setar District) were made through appellant.

On 20 November 1978 the Majlis Perbandaran Kota Setar wrote a letter to appellant asking whether the fire prevention conditions as specified has been installed and in good condition as there has been an application for the O.C. of that building. The appellant without first referring to his headquarters in Kuala Lumpur personally inspected the building and replied (in letter dated 18 November 1978) but did not make a recommendation to the Majlis Perbandaran Kota Setar for the issuance of an Occupation Certificate.

Between 18 November 1978 and 25 February 1979 Speedwell approached appellant asking for relaxation of the requirements of the fire-fighting conditions. There was also a letter from Speedwell of this intention of converting a store into a showroom and accordingly seeking a relaxation of the conditions imposed. The appellant also did not refer this letter to his headquarters in K.L.

Then there was a request for inspection of the premises (by form dated 24 February 1979 Exhibit P19). Appellant without referring to his headquarters in Kuala Lumpur inspected the premises which led to appellant to issue the letter of clearance and supporting the issuance of the Occupation Certificate (P9) dated 25 February 1979 to the Majlis Perbandaran Kota Setar which acting on this clearance issued the Occupation Certificate dated 18 March 1979 which they would not have done so if there was no clearance from appellant.

Later on there was a police report followed by the Chief of the Fire Preventive section from Kuala Lumpur inspecting the premises on 1 March 1980 where he found that:

i) there was only I hose reel installed instead of 2 as required. The hose reel was not workable and on top of this there was no pump. There was also no water tank exclusively for the purpose of operating the hose reel;

ii) the oil interceptor was not yet ready for use as it was still under construction (this was on 1 March 1980. The Appellant sent his clearance to the Majlis Perbandaran Kota Setar on 25 February 1979);

iii) the fire alarm system was not complete. It was not workable as there was no panel (control box).

There was evidence that the costs of installing the fire prevention as laid down by the headquarters in Kuala Lumpur would cost about RM12,000 and the costs of the fire equipment put up at Speedwell costs RM1,345 not including the pump.

These are then, the facts as found by the learned President. Though appellant as Chief of the Fire Service in the State of Kedah/Perlis have the powers of approval on his own, he very well knew that the conditions imposed by his Kuala Lumpur headquarters must be complied with. He deliberately did not refer to Kuala Lumpur when he received the request for inspection, not did he refer to Kuala Lumpur headquarters when he gave the clearance Exh. P9 to the Majlis Perbandaran Kota Setar.

The learned President made findings of facts that appellant knew that the document P9 was false in material particulars and he did knowingly give this document to the Principal i.e. Majlis Perbandaran Kota Setar which he knew was intended to mislead the Majlis.

The appellant's second ground of appeal is practically a question of fact though couched as a question of law and fact. It has no grounds at all on which this Appellate Court can interfere with the findings of facts of the learned President. This disposes of the appellant's second ground of appeal.

As regards the first ground of appeal which is a pure question of law, that is whether the document P9 the letter of clearance issued by the appellant which reads:

Ex.P. 9

Telefon: Alor Setar: 722221 & 724177
Bil. Surat Kami: JBM K/P (PK) 44020

Ibupejabat Perkhidmatan
Bomba
Negeri Kedah/Perlis.
Alor Setar:

Tarikh: 25 Februari, 1979

Yang DiPertua,
Majlis Perbandaran Kota Setar,
Alor Setar,
KEDAH.

Tuan,

Per: **Perakuan Kepada Sokongan Menduduki Bangunan**

Bangunan saperti di Fail: MP (KS)/BA/440 telah diperiksa/, dan semua alat-alat kelengkapan Bomba yang disyorkan telah diuji serta didapati memuaskan.

2. Dengan ini Pejabat ini memberi sokongan kepada pengeluaran Kebenaran Menduduki Banguan di alamat Plot 78 Kawasan Perusahaan Mergong II untuk M/s. Speedwell Co.,

(Fire Alarm Point/Hose Reels dll)

Sekian.

Saya yang menurut perintah,

t.t.
Pengarah,
PERKHIDMATAN BOMBA NEGERI,
KEDAH/PERLIS.

comes within the meaning of **"receipt, account or other document"** in s. 4(c) of the P.C.A. 1961. It is the view of the learned Counsel for the appellant and the learned DPP and also of this Court that this point is the real issue in this appeal.

According to well-laid principles whenever there are two words preceding the phrase "or other document", which in this sub-section is one, the *ejusdem generis* rule applies.

The sub-section reads:

Section 4 If-

(c) any person knowingly gives to an agent, or if an agent, knowingly uses with intent to deceive his principal, any **receipt, account or other document** in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both.

First, it is clear that P9 is indeed a document, it is a piece of letter with words typed on it. It is not a pipe or a brick. In line with various authorities this document P9 must belong to the same genus as that of a receipt and an account, that is to say, this document must have something to do with money.

The document relating to the 2nd charge in this case is the certificate Exhibit P9. This certificate was proved to be false by sufficient evidence adduced by the prosecution. It was also proved beyond reasonable doubt that when the appellant used the certificate (Exhibit P9), he knew to be false. It is contended by the appellant that this certificate does not come within the ambit of s. 4(c) of the Prevention of Corruption Act 1961. It is clear from the

evidence adduced in this case that by the certificate, Speedwell had saved a lot of money and had it not been for it Speedwell would have suffered financially in that Speedwell has to spend more to comply with the conditions. The reduction of the number of fire fighting equipment entail financial considerations and Speedwell had accrued a financial advantage. The legal purpose of the document and circumstances under which it was used must also be considered. Therefore it is clear that on this premise alone it can properly be held that in law the certificate (Exhibit P9) is a document within the ambit and meaning of s. 4(c) of the Prevention of Corruption Act. After reviewing the various cases this Court is of the view, and it so rules, that P9 has something to do with money matters. Just like the medical certificate in *Nadimuthu's* case (*Nadimuthu v. PP* Federal Court [1974] MLJ Vol. 1 p. 20), this letter of clearance P9 gave a financial advantage of Speedwell.

Another point of law submitted is that there must be an element of corruption in the case against the appellant. There must be evidence that appellant has corruptly obtained or accepted any gratification in order to sustain the charge against him for which he has been convicted. It has been urged that the Court should take into consideration the title of the Act, the head notes and give the purposive approach to the interpretation i.e., that a charge under s. 4(c) there must be proof that appellant did it corruptly.

The word "corruptly" is not found in s. 4(c) though it is found in s. 4(a) and s. 4(b), and the legislature used the word "knowingly" instead.

The words of s. 4(c) are very clear and this golden rule of interpretation are accepted in *Nadimuthu's* case as well as in the *Sage's* case [1974] 1 MLJ 20. This Court has no reason at all to differ from the reasonings of these two cases, and this Court rules that the element of corruption in the sense of obtaining illegal gratification need not be injected into this s. 4(c) which the legislature had not done so.

Therefore the contention that appellant was acquitted on the 1st charge i.e., for corruptly obtaining a sum of RM400 or that there is no element of corruption or that the appellant has profited or benefited has no bearing or relevance to him being convicted on the 2nd charge which is the subject of this appeal.

One can be guilty under s. 4(c) even if there is no proof that one has taken a cent from committing this offence, which is a kindred offence of abusing one's power akin to corruption.

As such the appeal is dismissed. I confirm the conviction of the learned President. On the sentence: I vary the sentence of imprisonment of 3 months to 1-day imprisonment and the fine of RM3,000 is varied to RM5,000 or in default 6-month imprisonment. The fine of RM5,000 be paid on or before 1 March 1984. Appellant to execute a bond of RM5,000 in one surety.

Also found at [1984] 2 CLJ 46